

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>In re:</b>	)	
	)	
<b>XINERGY LTD., <i>et al.</i>,</b>	)	<b>CHAPTER 11</b>
	)	
<b>Debtors.</b>	)	<b>Case No. 15-70444</b>
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<b>XINERGY LTD., <i>et al.</i>,</b>	)	
	)	
<b>Movants,</b>	)	
	)	
<b>v.</b>	)	<b>DEBTORS' SECOND OMNIBUS</b>
	)	<b>OBJECTION TO CLAIMS</b>
	)	<b>(Docket No. 496)</b>
<b>MERAL, INC.,</b>	)	
	)	
<b>Respondent.</b>	)	
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<b>MERAL, INC.,</b>	)	
	)	
<b>Movant,</b>	)	
	)	
<b>v.</b>	)	<b>MOTION TO LIFT THE</b>
	)	<b>AUTOMATIC STAY</b>
	)	<b>(Docket No. 502)</b>
<b>XINERGY LTD., <i>et al.</i>,</b>	)	
	)	
<b>Respondents.</b>	)	
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**MEMORANDUM OPINION**

This matter comes before the Court upon the Debtors' Second Omnibus Objection as to Certain Claims, with respect to Claim No. 1232 of Meral, Inc. (the "Claim Objection"), and the Motion to Lift the Automatic Stay filed by Meral, Inc. for "cause" pursuant to 11 U.S.C. § 362(d)(1) (the "Motion for Relief"), along with the responses thereto and the legal authorities and arguments submitted in support thereof. For the reasons set forth below, the Claim Objection is sustained with respect to Claim No. 1232,

and Claim No. 1232 shall be reclassified from a secured claim to an unsecured claim.

Further, Meral, Inc.'s Motion for Relief is denied.

### FINDINGS OF FACT<sup>1</sup>

On April 6, 2015, Xinerger Ltd. and related entities (collectively, the “Debtors”) filed voluntary petitions under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101 *et seq.* The cases were procedurally consolidated and are being jointly administered by this Court.

On November 6, 2015, the Debtors filed their Second Omnibus Objection to Claims, which included an objection to Claim No. 1232 filed by Meral, Inc. (“Meral”). Debtors’ Obj. to Claim ¶ 15, Ex. 1. As noted in the Claim Objection, Claim No. 1232 is filed by Meral as a secured claim in the amount of \$671,812.14.<sup>2</sup> The Claim Objection recites that Meral asserts this amount is secured based on an Asset Purchase Agreement between Meral and South Fork Coal Company, LLC (“South Fork”)<sup>3</sup> dated January 31, 2011 (the “APA”). Debtors’ Obj. to Claim ¶ 15. On March 17, 2014, Meral and the Debtors entered into an Amendment to the APA (the “Amendment”). *Id.* Through the APA, South Fork purchased certain property from Meral, including all of Meral’s “rights,

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<sup>1</sup> Where appropriate, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact. *See* Fed. R. Bankr. P. 7052, 9014(c).

<sup>2</sup> Meral also filed Claim Nos. 1165 and 1226. The Claim Objection notes that Claim No. 1232 supersedes Claim Nos. 1165 and 1226. By Order entered December 17, 2015, the Court sustained the Debtors’ Objection to Claim No. 1165 as being disallowed and expunged by agreement with Meral due to being amended and superseded by subsequently filed Claim No. 1232. The Debtors withdrew their objection to Claim No. 1226 solely to the extent that the Claim Objection seeks to disallow and expunge the claim on the basis that it has been amended and superseded, but the Debtors reserved all rights to object to Claim No. 1226 on any other grounds. *See* Order (I) Granting Debtors’ Second Omnibus Objection as to Certain Claims (Reclassification and/or Reduction of Alleged Administrative, Priority, and Secured Claims; Amended and Superseded Claims; Equity Claims; Paid and Satisfied Claims), (II) Withdrawing the Debtors’ Second Omnibus Objection as to Certain Claims, and (III) Continuing the Debtors’ Second Omnibus Objection as to Certain Other Claims ¶¶ 1-2, 5, Ex. 1, Dec. 17, 2015.

<sup>3</sup> South Fork is one of the Debtors in the consolidated cases. *See* Case No. 15-70442, Docket No. 5.

title and interest in and to any and all real property and other assets related thereto (including, without limitation, the Leases, all mineral or surface property interests, and all mining rights).” Joint Ex. A ¶ A. Specifically, under the APA, South Fork purchased from Meral rights under a mining lease (the “WPP Coal Mining Lease”) and “load-out” facility lease (collectively, the “Leases”), as well as certain records, engineering and environmental reports, and mining application permits (collectively, the “Other Assets”). *Id.* ¶ 1, Schedules 1(a) and 1(b). In addition, pursuant to the APA, South Fork assumed and became responsible for “all liabilities and obligations of [Meral] under the Leases or related to the [Other] Assets....” *Id.* ¶ 2(a).<sup>4</sup> The Debtors argue that neither the APA nor the Amendment provide Meral with a security interest in any assets of the Debtors, and thus, Meral’s assertion of a secured claim is not supported. Debtors’ Obj. to Claim ¶ 15. The Debtors further argue that even if a security interest was created, it was not perfected. *Id.*

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<sup>4</sup> As consideration for the Sale of the Leases and the Other Assets by Meral, South Fork agreed to make the following payments: (a) \$1,700,000.00 on the closing date, (b) \$2,500,000.00 upon issuance of certain required permits from West Virginia for conducting mining operations on the property subject to the Leases (the “First Permitting Payment”), and (c) \$1,000,000.00 on the date 18 months after First Permitting Payment (the “Second Permitting Payment”). In addition, South Fork agreed to pay Meral an overriding royalty payment equal to (a) \$1.50 per ton for all coal sold by South Fork for less than or equal to a gross sales price of \$150.00 per ton FOB mine or (b) \$2.00 per ton, or one percent (1%) of the of the gross sales price FOB mine, whichever is greater, for all coal sold by South Fork for a gross sales price greater than \$150.00 per ton FOB mine. The Amendment modified South Fork’s obligation to make the Second Permitting Payment as follows: (a) \$200,000.00 shall be paid on April 15, 2014, and (b) beginning on July 15, 2014, and continuing on the fifteenth (15th) day of each third month thereafter, South Fork shall make a payment of \$50,000.00 with interest accruing at the rate of nine-and-a-half percent (9 ½%) per annum, until July 15, 2019, at which time all then unpaid interest and principal shall be due. Joint Ex. B ¶ 1. The Amendment further provides that the foregoing payment schedule would be modified in the event the amount of coal produced and sold from the property subject to the Leases averaged at least 40,000 tons per month for at least two calendar months at an average sales price of at least \$105.00 per ton, and again at 50,000 tons per month for at least two calendar months at an average price of at least \$105.00 per ton. Joint Ex. B ¶ 2(a). According to the Debtors, as of petition date, South Fork owed Meral \$703,585.86 under the APA. Debtors’ Obj. to Mot. for Relief ¶ 9.

On November 9, 2015, Meral filed its Motion for Relief, where Meral argued that it “assigned its interest in a leasehold agreement for the mineral rights of certain properties in Greenbrier County, WV,” and that Meral “maintained a secured interest in said leasehold in the [APA].” Meral’s Mot. for Relief, at 1. Meral requested that the Court lift the automatic stay of Section 362 to allow Meral to “reassume the lease and protect [its] interest in said leasehold.” *Id.* On November 19, 2015, Meral filed its Response to the Claim Objection, arguing that the Court should deny the Claim Objection. Meral stated that it is the lessee of certain mineral and related rights from WPP LLC under a coal mining lease dated August 13, 2008 (the “WPP Coal Mining Lease”), and that a memorandum of this lease (the “Memorandum of Lease”) is recorded in the Greenbrier County Clerk’s Office in Greenbrier, West Virginia. Meral’s Resp. to Claim Obj. ¶ 6. Meral also stated that it assigned those certain mineral and related rights to South Fork through the APA and later amended the payment terms through the Amendment. *Id.* ¶ 7. In addition, Meral cited the following excerpt from Section 3(a)(vii) of the APA, which Meral claimed granted it a security interest in the WPP Coal Mining Lease:

Seller shall have the right to declare all of the rights of Purchaser in the Reserve Area created by this agreement and the Consent, Assignment and Assumption Agreements terminated and Seller shall be entitled to enter the premises of the Leases and to exclude Purchaser therefrom and to hold the same, together with all machinery, equipment, tools and other property therein and thereon which are free and clear of all liens and encumbrances, including permits (Purchaser agrees to transfer and assign all permits to Seller), so that Seller can immediately maintain operating the mines located on the premises of the Leases, if Seller so elects.

*Id.* ¶ 8 (quoting Joint Ex. A ¶ 3(a)(vii)). Meral also claimed that Section 3(a)(vii) of the APA “secures Meral[]’s interest in the reserve area and gives Meral [] the right to

reassume the leasehold if [South Fork] failed to make payments as required under the terms of the [APA].” *Id.* ¶ 9.

On November 27, 2015, the Debtors filed their Objection to the Motion for Relief, arguing that the Motion for Relief should be denied because Meral has not met its burden under Section 362 to show cause to lift the automatic stay. Debtors’ Obj. to Mot. for Relief ¶ 1. The Debtors argued that Meral has not asserted any facts establishing that Meral holds a perfected security interest in any of the Debtors’ assets. *Id.* ¶ 2. The Debtors also cited to Section 3(a)(vii) of the APA, including, *inter alia*, the following provision, listed in Section 3(a)(vii) below the language cited by Meral in its Motion for Relief: “This Section 3(a)(vii) shall not be constructed as (i) a lien upon any of the real, personal or mixed property of [South Fork] or its affiliates or a security interest granted by [South Fork] therein . . . .” *Id.* ¶ 7 (quoting APA ¶ 3(a)(vii)) (emphasis added). The Debtors argued that the automatic stay prohibits Meral from “exercising the equitable remedy to ‘reassume’” from South Fork the rights under WPP Coal Mining Lease and a “load-out” facility lease (collectively, the “Leases”) under the APA. *Id.* at 2, 5-6. The Debtors also argued that Meral has failed to establish “cause” because it does not have any interest in property of the Debtors. *Id.* at 6-8.

On December 4, 2015, the Debtors filed their Reply to Meral’s Response to the Claim Objection, arguing that the Court should sustain the Claim Objection because Meral failed to file a claim that is prima facie valid by not attaching supporting documentation. Debtors’ Reply to Meral’s Resp. ¶ 9-10. The Debtors further argued that the only evidence Meral produced, Section 3(a)(vii) of the APA, explicitly states that the

parties did not intend for Meral to have a secured claim, and Meral has not provided any evidence that any alleged security interest is perfected. *Id.* ¶ 11-12.

On December 8, 2015, the Court held a preliminary hearing on the Claim Objection and Motion for Relief. Joint Exhibits A through F, which were admitted into evidence, include the APA, the Amendment, the WPP Coal Mining Lease, the Memorandum of Lease, a property tax billing for 2013, and a tonnage and royalty report for 2015. *See* Joint Exs. A-F. Counsel for the Debtors again argued that Meral's claim is not entitled to prima facie validity as no supporting documentation reflecting a security interest was attached, and no such security interest exists to warrant secured status. Counsel for Meral argued that, although the caption "Asset Purchase Agreement" is a "bad title" for the document, the APA was filed with Claim No. 1232 to support its claim of a security interest. In addition, Meral argued that the APA is an executory contract under Section 363 of the Bankruptcy Code, and that Section 3(a)(vii) of the APA grants Meral a "right to reassume the Leases." Meral further argued that the APA should, instead, be titled "Assignment of Lease," and that its collateral is the "right to re-enter the property."

The Debtors argued that, if the Debtors assumed the WPP Lease, but not the APA,<sup>5</sup> it would not have any future royalty obligations because, assuming the APA was rejected, rejection is a prepetition breach that would accelerate a claim for damages and that Meral would be entitled to file a Proof of Claim for those damages. The Debtors

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<sup>5</sup> As of the December 8, 2015 hearing, the Debtors had not yet assumed or rejected the APA or WPP Coal Mining Lease. However, the confirmation hearing on the Debtors' Chapter 11 Plan took place on January 27, 2016. In connection with that hearing, the Confirmation Order was entered, the APA was rejected, and the WPP Coal Mining Lease was assumed. *See First Amended Joint Chapter 11 Plan of Xinergy Ltd. and Its Subsidiary Debtors and Debtors in Possession* dated October 14, 2015, at Article V, ¶ 5.1 (Docket No. 453); *Plan Supplement Relating to the Debtors' First Amended Chapter 11 Plan of Reorganization* dated January 13, 2016, Schedule D (Docket No. 628); *Findings of Fact and Conclusions of Law and Order Confirming the Debtors' Amended Joint Chapter 11 Plan* entered January 27, 2016 (Docket No. 678).

further argued that, if Meral had desired to be less risk averse, it could have provided for a security interest in the collateral. The Debtors further argued that Paragraph 8 of the Consent, Assignment and Assumption Agreement dated January 31, 2011, by and between Meral (Assignor), South Fork (Assignee), and WPP LLC (Lessor), entitled “Consent and Release of Assignor by Lessor,” is a complete release and would not be included if the APA was a collateral assignment. The Debtors also noted that, if they decide to assume the APA, the Debtors would have to cure prepetition defaults plus post-petition payments, including royalties.

The Court continued the hearing on the Claim Objection and Motion for Relief to January 21, 2016, at 2:00 p.m., but reserved the right to rule on the matters after receiving all briefs from the Debtors and Meral. The Debtors filed their brief on December 18, 2015, Meral filed its brief on January 5, 2016, and the Debtors filed their reply brief on January 13, 2016. In addition, WPP LLC filed a response to the Motion for Relief on January 13, 2016.<sup>6</sup> After receiving all briefs, the Court took the pending matters under advisement.<sup>7</sup>

### CONCLUSIONS OF LAW

This Court has jurisdiction of these matters by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on December 6, 1994, and Rule 3 of the Local Rules of the United States District Court for the Western District of Virginia. This Court further concludes that

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<sup>6</sup> WPP LLC joins the assertions the Debtors have made that Meral has no valid, perfected security interest in any of the Debtors’ property.

<sup>7</sup> The parties collectively requested that the Court delay ruling on the matters presently before it pending settlement negotiations, and the Court did so. Those negotiations ultimately proved unsuccessful.

these matters are “core” bankruptcy proceedings within the meaning of 28 U.S.C. § 157(b)(2)(A), (B), (G), (K).

## **I. Claim Objection**

Resolution of the Claim Objection is inherently intertwined with resolution of the Motion for Relief. Nevertheless, the Court will decide the Claim Objection at the outset. Pursuant to the Section 502 of the Bankruptcy Code, a timely filed claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). Once a party objects, the Court, after notice and a hearing, must determine the amount and validity of the claim. 11 U.S.C. § 502(b). The Court then makes such a determination by following the burden-shifting framework established by the Fourth Circuit in *Harford Sands*. *See In re Virginia Broadband, LLC*, 521 B.R. 539, 557 (Bankr. W.D. Va. 2014), *aff’d sub nom. Virginia Broadband, LLC v. Manuel*, 538 B.R. 253 (W.D. Va. 2015) (citing *Stancill v. Harford Sands, Inc. (In re Harford Sands, Inc.)*, 372 F.3d 637 (4th Cir. 2004)).

### **A. Meral is Not Entitled to Prima Facie Validity of Its Claim Because the Supporting Documentation to Its Proof of Claim Is Insufficient.**

Under the *Harford Sands* framework, the claimant’s proper filing of a proof of claim, including the required supporting documentation, is prima facie evidence of the claim’s amount and validity. *In re Hilton*, No. 12–61102, 2013 WL 6229100, at \*4–5, 2013 Bankr. LEXIS 5058, at \*13 (Bankr. W.D. Va. Dec. 2, 2013) (citing *Falwell v. Roundup Funding LLC (In re Falwell)*, 434 B.R. 779, 783 (Bankr. W.D. Va. 2009); Fed. R. Bankr. P. 3001(c), (f)). Except for claims based on open-end or revolving consumer credit agreements, when a claim or interest in property of the debtor securing the claim is



based on a writing, a copy of the writing must be filed with the proof of claim.<sup>8</sup> Fed. R. Bankr. P. 3001(c)(1), (3). If the claimant files a prima facie valid claim, the burden shifts to the debtor (the objecting party) to “introduce evidence to rebut the claim’s presumptive validity.” *Harford Sands*, 372 F.3d at 640 (citing Fed. R. Bankr. P. 9017; Fed. R. Evid. 301; 4 *Collier on Bankruptcy* ¶ 501.02[3][d] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2004)). If the debtor satisfies this burden, the burden shifts back to the claimant who “has the ultimate burden of proving the amount and validity of the claim by a preponderance of the evidence.” *Id.* (citing 4 *Collier* ¶ 502.02[3][f]) (footnote omitted). If the claimant cannot produce sufficient evidence to meet this burden, the claim fails, and the court should sustain the objection. *Hilton*, 2013 WL 6229100, at \*5, 2013 Bankr. LEXIS 5058, at \*15.

Here, although no party expressly submitted copies of Meral’s proofs of claim into evidence, the Court obtained copies from the Claim’s agent, which was designated as the authorized repository for all proofs of claim filed in these Chapter 11 cases by Order entered April 9, 2015. The appointment order provided that, upon request of the Clerk’s Office, certified duplicates would be provided to the Clerk. Docket No. 70. Meral timely filed Proof of Claim Number 1232 on July 31, 2015,<sup>9</sup> and attached the Amendment as supporting documentation as purported evidence of a secured claim in the amount of \$671,812.14. The actual APA, although referenced in the Amendment, was not included

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<sup>8</sup> Failure to provide documentation does not invalidate the proof of claim; it merely deprives the claim of prima facie validity. *Hilton*, 2013 WL 6229100, at \*5, 2013 Bankr. LEXIS 5058, at \*13.

<sup>9</sup> The bar date for non-governmental claims in the consolidated cases was July 31, 2015.

as supporting documentation to the proof of claim.<sup>10</sup> In *Falwell*, the Court addressed what writings or supporting documents are necessary to support a valid prima facie claim.

The documents . . . that are required to give a proof of claim prima facie validity are those that identify the claimant and the amount of the claim, and provide information sufficient to identify the basis for the claim (such as the account number). A writing, if required, must support the existence and the amount of the claim and, if applicable, the priority or secured character of the claim.

434 B.R. at 785.

Although a lack of documentation required by Rule 3001, in and of itself, is not a basis for disallowance of a claim in the Fourth Circuit, the claimant loses the prima facie presumption of validity and amount. *In re Andrews*, 394 B.R. 384, 389 (Bankr. E.D.N.C. 2008) (citing *In re Herron*, 381 B.R. 184, 190 (Bankr. D. Md. 2008); *In re Simms*, No. 06-1206, 2007 WL 4468682, at \*2, 2007 Bankr. LEXIS 4134, at \*5 (Bankr. N.D. W. Va. 2007)). The claimant is then “left with the burden of proof on the validity and amount of its claim at any further hearing.” *Simms*, 2007 WL 4468682, at \*2, 2007 Bankr. LEXIS 4134, at \*5 (citations omitted). In the instant case, even though the parties stipulated the documents filed as joint exhibits at the hearing, Meral’s claim did not comply with Rule 3001(c)(1) at the outset, and thus, Meral’s claim is not entitled to prima facie validity under 3001(f). The Amendment is not sufficient as prima facie evidence of the claim’s validity because the alleged security interest cannot be evaluated without reviewing the APA itself, which was not attached to the proof of claim. Therefore, no presumption of

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<sup>10</sup> Meral filed three claims: Claim Nos. 1165, 1226, and 1232. Meral included the Amendment as supporting documentation to Claim Number 1165, but did not include the APA. No supporting documentation was enclosed with Proof of Claim Number 1226 filed by Meral. All three proofs of claim and supporting documentation, if applicable, were filed with American Legal Claim Services, Inc., the claims, noticing and balloting agent. As the proofs of claim are not otherwise in the record, they are attached as exhibits to this opinion.

validity exists, and the burden remains on Meral to prove the validity of a security interest purportedly granted by the APA by a preponderance of the evidence. *Harford Sands*, 372 F.3d at 640.

B. The APA Not Only Lacks the Clear, Unambiguous Language to Grant Meral a Security Interest, but Also Explicitly Provides that No Security Interest Exists in the Debtors' Property.

The Debtors first object to Claim Number 1232 on the basis that the APA does not provide Meral with any security interest in the Debtors' property. As a preliminary matter, West Virginia law governs the interpretation of the APA. Joint Ex. A ¶ 12(d). Article 9 of the Uniform Commercial Code ("UCC")<sup>11</sup> governs any alleged security interest in personal property, including the Other Assets, but not interests in real property, such as the Leases. *See* W. Va. Code § 46-9-109(a)(1), (d)(11). The West Virginia Code includes separate recordation requirements applicable to creation and perfection of a lien on interests in real property, such as the Leases. *See* W. Va. Code § 40-1-9 (listing the requirements for perfection of an interest in real property).

As both the Debtors and Meral have noted, it is a requirement of a valid security interest that the security agreement or other document intended to establish a security interest contain a "written expression by the debtor granting a security interest." *In re Modafferi*, 45 B.R. 370, 373 (S.D.N.Y. 1985). Further, where a document lacks "'granting' language," it fails to sufficiently "demonstrate a present intent to pledge collateral." *Id.*; *see also Transp. Equip. Co. v. Guaranty State Bank*, 518 F.2d 377, 380

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<sup>11</sup> The West Virginia Commercial Code was adopted from the Uniform Commercial Code. When the Court cites to opinions from other states interpreting that state's commercial code, it does so with the understanding that the other state has adopted the same subsections from the Uniform Commercial Code as West Virginia. *In re Weir-Penn, Inc.*, 344 B.R. 791, 794 (Bankr. N.D.W. Va. 2006).

(10th Cir. 1975) (finding that courts “almost uniformly come to the conclusion that in order for a security agreement to be effective it must contain language which specifically creates or grants a security interest in the collateral described.”). In finding that the financing statement in *Modafferi* did not grant a security interest in the underlying collateral, the court noted that “[a]t a minimum, the ‘terms’ must recite the obligation secured.” 45 B.R. at 374 (citation omitted) (finding that the financing statement did not qualify as a security agreement under Art. 9 of the UCC). Further, “[w]hile there are no magic words which create a security interest there must be language in the instrument which ‘leads to the logical conclusion that it was the intention of the parties that a security interest be created.’” *Mitchell v. Shepherd Mall State Bank*, 458 F.2d 700, 703 (10th Cir. 1972) (quoting *Evans v. Everett*, 279 183 S.E.2d 109, 113 (N.C. 1971)).

First, Meral argues that APA ¶ 3(a)(vii) contains language that grants Meral a security interest where that section provides that Meral “shall be entitled to enter the premises of the Leases and to exclude [the Debtors] therefrom and . . . immediately maintain operating the mines located on the premises of the Leases . . . .” The Debtors respond that, in arguing for this “right of reentry” language, Meral confuses a contractual right with the grant of a security interest in collateral. However, the Court need not distinguish between the equitable right of reentry and a retained property interest because APA ¶ 3(a)(vii) specifically denies that such a security interest is conveyed with respect to that paragraph. APA ¶ 3(a)(vii) expressly states, “This section 3(a)(vii) shall not be constructed as (i) a lien upon any of the real, personal or mixed property of [South Fork] or its affiliates or a security interest granted by [South Fork] therein . . . .” Thus, it appears that the clear intent of South Fork and Meral was specifically *not* to create any

type of security interest as a result of this paragraph, so Meral's right of reentry argument is misguided. Thus, the "right of reentry" language listed above this clause cannot grant Meral a security interest because the clear and unambiguous language states otherwise.

Under West Virginia law, which governs the interpretation of the APA, "there can be no doubt that it is for a trial court to determine whether the terms of an integrated agreement are unambiguous and, if so, to construe the contract according to its plain meaning." *Fraternal Order of Police, Lodge No. 69 v. City of Fairmont*, 468 S.E.2d 712, 715 (W. Va. 1996). The Court's task is "not to rewrite the terms of contact [sic] between the parties; instead, [the Court is] to enforce it as written." *Id.* at 716. Moreover, "[t]he mere fact that parties do not agree to the construction of a contract does not render it ambiguous. The question as to whether a contract is ambiguous is a question of law to be determined by the court." *Id.* at 717-18 (internal quotation marks omitted) (quoting *Int'l Nickel Co. v. Commonwealth Gas Corp.*, 163 S.E.2d 677, 680 (W. Va. 1968)). In this case, the language in Paragraph 3(a)(vii) of the APA is clear that no security interest was granted by that section, and the Court will not attempt to rewrite the APA to grant Meral a security interest that does not exist by the terms of the agreement.

Even if the Court were to look past the explicit language in APA ¶ 3(a)(vii) specifically not providing for any lien or security interest in the Debtors' property, the "right of reentry" language in that paragraph does not convey a property right because Meral fails to satisfy the statutory requirement under the West Virginia Code for a "right of reentry" property interest. West Virginia courts have held that, to enforce a "right to reenter," as a property interest, and exclude a party in possession of the property, the asserting party must have *legal title* to the property and must be entitled to *immediate*

possession of that property. *See, e.g., Marthens v. B & O Railroad Co.*, 289 S.E.2d 706, 712 n.2 (W. Va. 1982) (“Ejectment is an action for the protection of one with good legal title to the land who is entitled to immediate possession.”); *Sands v. Holbert*, 117 S.E. 896, 897 (W. Va. 1923) (citations omitted) (“It is well established that unless plaintiff has the legal title he cannot maintain an action of ejectment.”); *see also Stewart v. Workman*, 102 S.E. 474, 475 (W. Va. 1920) (finding that the right to reenter can only be reserved by a grantor holding title to the property).

In this case, Meral does not hold legal title to the property that is subject to the Leases, and thus, cannot meet its burden of establishing an enforceable right to reenter. Meral is also not entitled to immediate possession of the property that is subject to the Leases. Prior to exercising any alleged right to reenter, APA ¶ 3(a)(vii) requires Meral to first obtain the consent of WPP LLC. Meral has introduced no evidence that this consent was given. Thus, Meral is not entitled to immediate possession, and fails to meet its burden of proving a security interest in the Debtors’ property exists.

C. Even if the Purported Security Interest Did Exist, Meral Has Not Perfected the Security Interest as Required by Rule 3001(d).

Meral also argues that the previous recorded Memorandum of Leases, which references the Leases found in the APA, should lead the Court to determine that Meral has a valid security interest. Meral cites *In re 1550 Wilson Boulevard, L.P.* for the proposition that a lease assignment can create a valid, perfected security interest. 206 B.R. 812 (E.D. Va. 1996). In *1550 Wilson Boulevard*, in the cash collateral context, the court held, under Virginia law, that a lender’s security interest under an assignment of leases and rents is perfected when the assignment of rents is recorded in the appropriate

land records along with a leasehold deed of trust. *Id.* at 816 (citing Va. Code § 55-220.1).

As the Debtors aptly note, *1550 Wilson Boulevard* actually supports a finding that Meral has not properly created or perfected its interest in the Leases by not entering into or filing a leasehold mortgage, assignment of rents and leases, collateral assignment of lease, or some other analogous document evidencing a security interest. In order to have a valid security interest, the claimant must have perfected that interest. *See First Nat'l Bank of Mercer County v. Rankin (In re Rankin)*, 102 B.R. 439, 443 (Bankr. W.D. Pa. 1989).

A security interest in leases must be recorded pursuant to applicable state law property recordation requirements, in this case, West Virginia's requirements, to achieve perfection. *See, e.g., In re DBSI, Inc.*, 432 B.R. 126, 132 (Bankr. D. Del. 2010). Under West Virginia law, to perfect an interest in real property, including an interest in leases, the holder of the security interest must record documentation evidencing its interest in the leases "in the county wherein the property embraced in such contract, deed, deed of trust or memorandum of deed of trust or mortgage" is located. W. Va. Code § 40-1-9. The record contains no evidence that Meral made a filing evidencing a security interest. Further, a recorded memorandum of lease, in and of itself, does not create a perfected security interest where no security interest exists to begin with. *See DBSI*, 432 B.R. at 133. Thus, Meral does not have any perfected security interest in the assets of the Debtors. Accordingly, the Claim Objection is sustained.

## II. Motion for Relief

Once a debtor files a bankruptcy petition, the automatic stay of 11 U.S.C. § 362(a) stays most legal proceedings against the debtor. *See* 11 U.S.C. § 362(a). Nevertheless, the Bankruptcy Code also grants discretion to the bankruptcy courts to lift the stay “for cause.” *See* 11 U.S.C. § 362(d)(1). The Code does not define what constitutes “cause,” so “courts must determine when discretionary relief is appropriate on a case-by-case basis.” *See, e.g., Robbins v. Robbins (In re Robbins)*, 964 F.2d 342, 345 (4th Cir. 1992) (citations omitted). Deciding whether to lift the stay is within the discretion of the bankruptcy court. *In re Robbins*, 964 F.2d at 345 (citing *In re Boomgarden*, 780 F.2d 657, 660 (7th Cir. 1985)); *In re Joyner*, 416 B.R. 190, 191 (Bankr. M.D.N.C. 2009).

In determining whether to grant relief from the automatic stay, courts “must balance potential prejudice to the bankruptcy debtor’s estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied.” *In re Robbins*, 964 F.2d at 345 (citing *Peterson v. Cundy (In re Peterson)*, 116 B.R. 247, 249 (D. Colo. 1990)). “While Congress intended the automatic stay to have broad application, the legislative history to [S]ection 362 clearly indicates Congress’ recognition that the stay should be lifted in appropriate circumstances.” *In re Robbins*, 964 F.2d at 345.

The initial burden rests on the movant, Meral, to establish a prima facie case to show that “cause” exists in the first instance. *Unnamed Citizens A Thru E and Certain Minor Children v. White (In re White)*, 410 B.R. 195, 201 (Bankr. W.D. Va. 2008). If Meral meets its burden of establishing a prima facie case, the burden shifts to the Debtors to show that “cause” does not exist to lift the stay. *Id.* (explaining that the movants have



the “initial burden of demonstrating an appropriate basis for relief,” but “[o]nce that has been accomplished . . . the ultimate burden of proof rests upon the [d]ebtor to show a lack of cause to grant the . . . [m]otion for [r]elief”).<sup>12</sup>

Pursuant to the Motion for Relief, Meral moves for relief from the automatic stay under Section 362(d)(1) “for cause, including the lack of adequate protection of an interest in property of such party in interest” so that Meral may “reassume the lease and protect their interest in said leasehold.” Meral’s Mot. for Relief, at 1 (quoting 11 U.S.C. § 362(d)(1)). The act of reassuming the WPP Coal Mining Lease would constitute an “act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3).

As the party seeking relief from stay, Meral “has the burden of showing the existence, the validity, and the perfection of its secured claim against the [p]roperty.” *In re Keen*, No. 13-71705, 2014 WL 6871867, at \*6, 2014 Bankr. LEXIS 4896, at \*19 (Bankr. W.D. Va. Dec. 3, 2014) (quoting *In re Palham Enters., Inc.*, 376 B.R. 684, 689 (Bankr. N.D. Ill. 2007)). However, as noted above, Meral does not have a security interest in the Leases or the Other Assets, and absent such, has provided no other basis for entitlement to adequate protection. *See* Part I, *infra*. Meral is an unsecured creditor of the Debtors, and has established no alternative grounds for relief under 11 U.S.C. § 362(d).

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<sup>12</sup> Under 11 U.S.C. § 362(g), “while the party seeking relief from the stay has the initial burden of production or going forward with the evidence to establish a prima facie case for relief, the burden of proof, i.e., the burden of persuasion, rests on the party opposing relief on all issues except the existence of equity.” *In re Joyner*, 416 B.R. at 192 n.1 (citations omitted).

CONCLUSION

For the foregoing reasons, the Court will sustain the Debtors' Objection to Claim with respect to Proof of Claim Number 1232, disallow Claim No. 1232 as a secured claim, and allow it as an unsecured claim. Further, the Court will deny Meral's Motion to Lift the Automatic Stay. An Order to such effect will be entered contemporaneously herewith.

Decided this 3<sup>rd</sup> day of February, 2016.

  
UNITED STATES BANKRUPTCY JUDGE

# **EXHIBIT 1**

United States Bankruptcy Court the Western District of Virginia		<b>PROOF OF CLAIM</b>	
In re: Xinergy Ltd., <i>et al.</i>  Debtors.	Chapter 11 Case No. 15-70444 (PMB)	<b>POSTMARKED</b>  <b>JUL 24 2015</b>  <b>RECEIVED</b>  <b>JUL 27 2015</b>  American Legal Claims	
Name of Debtor Against Which Claim is Held <b>South Fork Coal Company, LLC</b>	Case No. of Debtor <b>15-70442</b>		
<b>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</b>			
Name and address of Creditor : (and name and address where notices should be sent if different from Creditor) <b>Meral, Inc.</b> <b>507 Oaken Gate</b> <b>White Pine, TN 37890</b>  <b>865-397-4038</b> <b>fbrowning@hughes.net</b>  Telephone number:                      Email Address:		<b>THIS SPACE IS FOR COURT USE ONLY</b>  <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ (If known)  Filed on: _____	
Name and address where payment should be sent (if different from above)    Telephone number:                      Email Address:		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
<b>1. Amount of Claim as of Date Case Filed: \$ 637,460.55</b>  If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete Item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.  <input type="checkbox"/> Check this box if claim is for a claim related to goods delivered during the twenty (20) days prior to (the "Petition Date"), pursuant to 11 U.S.C. § 503(b)(9).		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  Specify the priority of the claim:  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries or commissions (up to \$12,475*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).  <b>Amount entitled to priority:</b>  \$ _____  <small>* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</small>	
<b>2. Basis for Claim:</b> Lease purchase agreement (See instruction #2 on reverse side.)  <b>3. Last four digits of any number by which creditor identifies debtor:</b> _____ <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)  <b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Lease Purchase Agreement  Value of Property: \$ 2,000,000.00      Annual Interest Rate 9.5 %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ 0      Basis for perfection: Asset Purchase Agreement  <b>Amount of Secured Claim: \$ 637,460.55      Amount Unsecured: \$ _____</b>		<b>FOR COURT USE ONLY</b>	
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b> If the documents are not available, please explain:  <b>Date:</b> 7/22/15 <b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  /s/Jeffery S. Greene Atty, 321 E. Broadway, Newport TN 37821 423-623-7271			
<b>Penalty for presenting fraudulent claim:</b> Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.			

**AMENDMENT TO ASSET PURCHASE AGREEMENT**

THIS AMENDMENT TO ASSET PURCHASE AGREEMENT ("Amendment") is made and entered into effective as of the 17 day of March, 2014, by and between MERAL, INC., a West Virginia corporation ("Seller"), and South Fork Coal Company, LLC, a West Virginia limited liability company ("Purchaser").

**Background:**

WHEREAS, Seller and Purchaser entered into that certain Asset Purchase Agreement dated January 31, 2011, (the "Asset Purchase Agreement") pursuant to which Seller sold, assigned, conveyed and transferred to Purchaser all of its right, title and interest in and to certain real property interests and other assets related thereto located in Greenbrier County, West Virginia. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meaning set forth in the Asset Purchase Agreement.

WHEREAS, Section 3(a)(iii) of the Asset Purchase Agreement required Purchaser to make payment of the Second Permitting Payment to Seller in the amount of One Million Dollars (\$1,000,000) on the date eighteen (18) months following the date of the First Permitting Payment.

WHEREAS, Seller and Purchaser have agreed to revise payment terms and conditions for the payment of the Second Permitting Payment and desire to document the revised payment terms and conditions upon which Purchaser shall make payment of the Second Permitting payment to Seller.

NOW, THEREFORE, WITNESSETH: That for and in consideration of the promises and the mutual covenants, representations and warranties herein contained, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller and Purchaser hereby agree as follows:

(1) **PAYMENT TERMS.** On and subject to the terms and conditions of this Amendment, Purchaser hereby agrees to make payment of the Second Permitting Payment in the principal amount of One Million Dollar (\$1,000,000), with compound interest thereon at the rate of Nine and One-Half Percent (9-1/2%) per annum, as follows:

- (a) **Initial Payment.** Purchaser shall pay Seller the amount of Two Hundred Thousand Dollars (\$200,000) on April 15, 2014.
- (b) **Quarterly Payments.** Beginning on July 15, 2014, and continuing on the fifteenth (15<sup>th</sup>) day of each third month thereafter, Purchaser shall make a payment of principal and interest to Seller in the amount of Fifty Thousand Dollars (\$50,000), credited first to then outstanding interest and then to principal, until July 15, 2019, at which time all then unpaid interest and principal shall be due and payable. An



Amortization Schedule demonstrating the schedule of payments set forth in this Amendment (the "Payment Plan") is attached hereto as Exhibit A.

(2) OTHER TERMS AND CONDITIONS. Additional terms with respect to the Payment Plan are as follows:

- (a) Production Benchmark Payments. The Payment Plan will be revised as follows:
  - (i) Upon the amount of coal produced and sold from the Greenbrier County property averaging at least forty thousand (40,000) tons per month for a continuous period of two (2) calendar months at an average sales price of at least \$105.00 per ton, Purchaser shall begin making increased quarterly payments of \$125,000.00 and if the then unpaid balance of principal owed to Seller by Purchaser is more than \$400,000.00, Purchaser shall make a lump sum payment to Seller in the amount of \$200,000.00 within the next six (6) calendar months.
  - (ii) Upon the amount of coal produced and sold from the Greenbrier County property averaging at least fifty thousand (50,000) tons per month for a continuous period of two (2) calendar months at an average sales price of at least \$105.00 per ton, Purchaser shall within forty-five (45) days pay all then remaining unpaid principal and interest.
- (b) Acceleration upon Change of Ownership. Upon the change of ownership of fifty-one percent (51%) or more of the membership interests of Purchaser, by the giving of written notice by Seller to Purchaser within ten (10) business days after receiving notice of such change of ownership from Purchaser or otherwise acquiring knowledge of such change of ownership, Seller may declare the then remaining unpaid amount of principal with interest thereon to be due and payable by Purchaser to Seller within ten (10) business days; provided, however, a transfer of fifty-one percent (51%) or more of the membership interests of Purchaser to an affiliate or parent, direct or indirect, of Purchaser which is under common control by the same entity that controls Purchaser shall not be deemed a change of ownership and control of Purchaser.
- (c) Prepayment. Purchaser shall have the right to prepay all or part of the outstanding principal with interest thereon only until the date payment of such principal is due from Purchaser.

(3) MISCELLANEOUS. Additional general terms to this Amendment are as follows:

- (a) Amendment. The terms and conditions of the Asset Purchase Agreement shall remain in full force and effect, unmodified, except as expressly modified by this Amendment.

- (b) Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the State of West Virginia without regard to its conflicts of law principles.

Electronic Signature and Counterparts. This Amendment may be executed by legal electronic signature and in one or more counterparts, any one of which need not contain the signatures of more than one party but all of which taken together shall constitute one and the same Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective duly authorized officers as of the day and year first above written.

Seller:

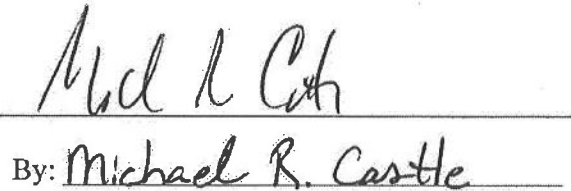
MERAL, INC.



By: Frederick F. Browning  
Its: President

Purchaser:

SOUTH FORK COAL COMPANY, LLC



By: Michael R. Castle

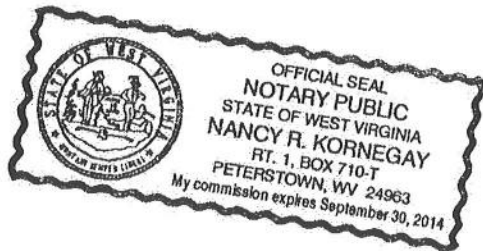
Its: CFO

STATE OF WEST VIRGINIA,

COUNTY OF MERCER, TO-WIT:

I, Nancy R. KORNEGAY, a Notary Public in and for the County and State aforesaid, do hereby certify that Frederick F. Browning, who signed the preceding AGREEMENT for Meral, Inc., a West Virginia corporation, has this day before me in my said County acknowledged that AGREEMENT to be the act and deed of said corporation.

Given under my hand and seal this the 17<sup>th</sup> day of March, 2014.



Nancy R. Kornegay  
Notary Public

(NOTARIAL SEAL)



STATE OF ~~WEST VIRGINIA~~, Tennessee

COUNTY OF Knox, TO-WIT:

I, Sarah C. Sharp, a Notary Public in and for the County and State aforesaid, do hereby certify that Michael R. Castle, who signed the preceding AGREEMENT for South Fork Coal Company, LLC, a West Virginia limited liability company, has this day before me in my said County acknowledged that AGREEMENT to be the act and deed of that limited liability company.

Given under my hand and seal this the 20<sup>th</sup> day of March, 2014.

Sarah C. Sharp  
Notary Public

(NOTARIAL SEAL)



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## Note Payable Meral, Inc.

Compound Period ..... : Quarterly

Nominal Annual Rate .... : 9.500 %

## CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	04/15/2014	1,000,000.00	1		
2 Payment	04/15/2014	200,000.00	1		
3 Payment	07/15/2014	50,000.00	20	Quarterly	04/15/2019
4 Payment	07/15/2019	18,431.58	1		

## AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	04/15/2014				1,000,000.00
1	04/15/2014	200,000.00	0.00	200,000.00	800,000.00
2	07/15/2014	50,000.00	19,000.00	31,000.00	769,000.00
3	10/15/2014	50,000.00	18,263.75	31,736.25	737,263.75
2014 Totals		300,000.00	37,263.75	262,736.25	
4	01/15/2015	50,000.00	17,510.01	32,489.99	704,773.76
5	04/15/2015	50,000.00	16,738.38	33,261.62	671,512.14
6	07/15/2015	50,000.00	15,948.41	34,051.59	637,460.55
7	10/15/2015	50,000.00	15,139.69	34,860.31	602,600.24
2015 Totals		200,000.00	65,336.49	134,663.51	
8	01/15/2016	50,000.00	14,311.76	35,688.24	566,912.00
9	04/15/2016	50,000.00	13,464.16	36,535.84	530,376.16
10	07/15/2016	50,000.00	12,596.43	37,403.57	492,972.59
11	10/15/2016	50,000.00	11,708.10	38,291.90	454,680.69
2016 Totals		200,000.00	52,080.45	147,919.55	
12	01/15/2017	50,000.00	10,798.67	39,201.33	415,479.36
13	04/15/2017	50,000.00	9,867.63	40,132.37	375,346.99
14	07/15/2017	50,000.00	8,914.49	41,085.51	334,261.48
15	10/15/2017	50,000.00	7,938.71	42,061.29	292,200.19
2017 Totals		200,000.00	37,519.50	162,480.50	
16	01/15/2018	50,000.00	6,939.75	43,060.25	249,139.94
17	04/15/2018	50,000.00	5,917.07	44,082.93	205,057.01
18	07/15/2018	50,000.00	4,870.10	45,129.90	159,927.11
19	10/15/2018	50,000.00	3,798.27	46,201.73	113,725.38
2018 Totals		200,000.00	21,525.19	178,474.81	
20	01/15/2019	50,000.00	2,700.98	47,299.02	66,426.36
21	04/15/2019	50,000.00	1,577.63	48,422.37	18,003.99
22	07/15/2019	18,431.58	427.59	18,003.99	0.00
2019 Totals		118,431.58	4,706.20	113,725.38	

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Note Payable Meral, Inc.

Date	Payment	Interest	Principal	Balance
Grand Totals	1,218,431.58	218,431.58	1,000,000.00	

**FedEx** *NEW Package*  
Express *US Airbill*

FedEx Tracking Number 8045 5473 5461

Form ID No. 0200

Recipient's Copy

1 From  
Date 7/24/15  
Sender's Name Jeffery S. Greene Phone 423 623-7271  
Company McSween, McSween, & Greene, PLLC  
Address 321 E. Broadway  
City Newport State TN ZIP 37821

2 Your Internal Billing Reference Meral, Inc - JSG

3 To  
Recipient's Name Xinerdy Ltd. Claims Gr. Phone  
Company 90 American Legal Claims Services, LLC  
Address 5985 Richard St. Ste B  
We cannot deliver to P.O. boxes or P.O. ZIP codes.  
Address Use this line for the HOLD location address or for continuation of your shipping address.  
City Jacksonville State FL ZIP 32216

HOLD Weekday  
FedEx location address  
REQUIRED. NOT available for  
FedEx First Overnight.  
HOLD Saturday  
FedEx location address  
REQUIRED. Available ONLY for  
FedEx Priority Overnight and  
FedEx 2Day to select locations.

4 Express Package Service \*To most locations.  
NOTE: Service order has changed. Please select carefully.

Next Business Day

☐ FedEx First Overnight  
Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  
☐ FedEx Priority Overnight  
Next business morning. \*Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  
☒ FedEx Standard Overnight  
Next business afternoon. \*Saturday Delivery NOT available.

2 or 3 Business Days

☐ FedEx 2Day A.M.  
Second business morning. \*Saturday Delivery NOT available.  
☐ FedEx 2Day  
Second business afternoon. \*Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  
☐ FedEx Express Saver  
Third business day. \*Saturday Delivery NOT available.

5 Packaging \*Declared value limit \$500.

☒ FedEx Envelope\* ☐ FedEx Pak\* ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling and Delivery Signature Options

☐ SATURDAY Delivery  
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

☐ No Signature Required  
Package may be left without obtaining a signature for delivery.  
☐ Direct Signature  
Someone at recipient's address may sign for delivery. Fee applies.  
☐ Indirect Signature  
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?

One box must be checked.  
☒ No ☐ Yes  
As per attached Shipper's Declaration. \*Yes  
Shipper's Declaration not required. ☐ Dry Ice  
Dry Ice, 5 UN 1845 x kg  
☐ Cargo Aircraft Only

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below. Obtain recip. Acct. No. ☐  
☐ Sender Acct. No. in Section 1 of this form ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

Total Packages Total Weight lbs. Credit Card Auth.

Your liability is limited to \$500 unless you declare a higher value. See the current FedEx Service Guide for details.



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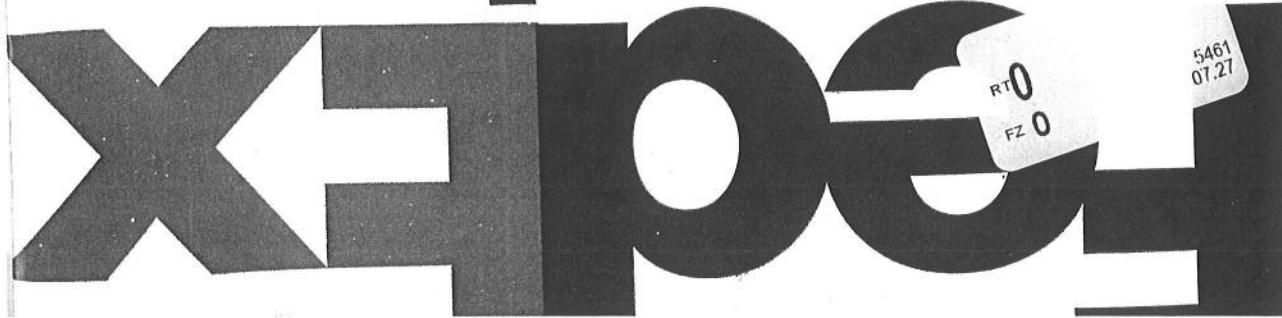
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## **EXHIBIT 2**



United States Bankruptcy Court the Western District of Virginia		<b>PROOF OF CLAIM</b>	
In re: Xinergy Ltd., et al.  Debtors.	Chapter 11 Case No. 15-70444 (PMB)	<div style="color: blue; font-size: 1.2em;">POSTMARKED</div> <div style="color: red; font-size: 1.5em; font-weight: bold;">JUL 29 2015</div> <div style="color: blue; font-size: 0.8em;">American Legal Claims</div>	
Name of Debtor Against Which Claim is Held South Fork Coal Company LLC	Case No. of Debtor 15-70442		
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<b>THIS SPACE IS FOR COURT USE ONLY</b>	
Name and address of Creditor : (and name and address where notices should be sent if different from Creditor)  Meral Inc. 507 Oaken Gate White Pine, TN 37890  865-397-4038                      fbrowning@hughes.net Telephone number:                      Email Address:		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ (If known)  Filed on: _____	<div style="color: blue; font-size: 1.2em;">RECEIVED</div> <div style="color: red; font-size: 1.5em; font-weight: bold;">JUL 30 2015</div> <div style="color: blue; font-size: 0.8em;">American Legal Claims</div> <div style="text-align: center; margin-top: 20px;"> <b>In re: XINERGY LTD.</b>  <b>Case No: 15-70444</b>  <b>CLAIM 1226</b> </div>
Name and address where payment should be sent (if different from above)  Telephone number:                      Email Address:		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
<b>1. Amount of Claim as of Date Case Filed: \$</b> <u>109,920.55</u>  If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete Item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.  <input type="checkbox"/> Check this box if claim is for a claim related to goods delivered during the twenty (20) days prior to (the "Petition Date"), pursuant to 11 U.S.C. §503(b)(9).		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a).</b> If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim:  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries or commissions (up to \$12,475*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).  <b>Amount entitled to priority:</b>  \$ _____  <i>* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</i>	
<b>2. Basis for Claim:</b> <u>Lease/Purchase Agreement</u> (See instruction #2 on reverse side.)  <b>3. Last four digits of any number by which creditor identifies debtor:</b> _____ <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)  <b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <u>Lease purchase agreement</u>  Value of Property: \$ <u>2,000,000.00</u> Annual Interest Rate <u>9</u> %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ <u>109,920.55</u> Basis for perfection: <u>lease/purchase agreement</u>  <b>Amount of Secured Claim: \$</b> <u>109,920.55</u> <b>Amount Unsecured: \$</b> _____		<b>FOR COURT USE ONLY</b>	
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b> If the documents are not available, please explain:		Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <u>/s/ Jeffery S. Greene, Atty, 321E Broadway, Newport, TN 37821 423-623-7271</u>	
<b>Date:</b> 06/22/2015			
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.			



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**XH NRBA**

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FL-US  
JAX

**FedEx** NEW Package  
Express US Airbill  
American Legal Claims  
Tracking Number 8045 5473 5450

1 From

Date 7/29/15

Sender's Name Jeffrey S. Greene Phone 413 683-7371

Company McSween, McSween & Greene, PLLC

Address 301 E. Broadway

City Newport State TN ZIP 37621

2 Your Internal Billing Reference

Meral, Inc. - LLC

3 To

Recipient's Name Xinerdy Ltd Claims Ctr. Phone

Company 96 American Legal Claims Services, LLC

Address 5985 Richard St Ste 3

City Jacksonville State FL ZIP 32216



8045 5473 5450



FTD 300149 29JUL15 GCY 637CL/8565/ET49

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5 Packaging

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☐ FedEx Pak®  
Signature required. Not available for FedEx Priority Overnight® or FedEx First Overnight®.

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☐ FedEx Tube  
Signature required. Not available for FedEx Priority Overnight® or FedEx First Overnight®.

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Signature required. Not available for FedEx Priority Overnight® or FedEx First Overnight®.

6 Special Handling and Delivery Signature Options

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Business day delivery, guaranteed by 3 p.m. next business day. Signature required. Saturday delivery available for select business days.

☐ Signature Required  
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FZ 07:30

## **EXHIBIT 3**



United States Bankruptcy Court the Western District of Virginia		<b>PROOF OF CLAIM</b>	
In re: Xinergy Ltd., et al. <div style="text-align: center;">Debtors.</div>	Chapter 11 Case No. 15-70444 (PMB)	<div style="color: blue; font-size: 1.2em;">POSTMARKED</div> <div style="color: red; font-size: 1.5em; font-weight: bold;">JUL 30 2015</div> <div style="color: blue; font-size: 1.1em;">American Legal Claims</div>	
Name of Debtor Against Which Claim is Held <b>South Fork coal Company, LLC</b>	Case No. of Debtor <b>15-70442</b>		
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.			
Name and address of Creditor : (and name and address where notices should be sent if different from Creditor)  <b>Meral, Inc. 507 Oaken Gate White Pine, TN 37890</b>  <div style="text-align: right;">fbrowning@hughes.net</div> Telephone number: <b>865-397-4038</b> Email Address:		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> <u>1165</u> (If known)  <b>Filed on:</b> <u>7-27-2015</u>	<div style="color: blue; font-size: 1.2em;">RECEIVED</div> <div style="color: red; font-size: 1.5em; font-weight: bold;">JUL 31 2015</div> <div style="color: blue; font-size: 1.1em;">American Legal Claims</div>
Name and address where payment should be sent (if different from above)  Telephone number: Email Address:		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
In re: <b>XINERGY LTD.</b> Case No: <b>15-70444</b> CLAIM <b>1232</b>			
<b>1. Amount of Claim as of Date Case Filed: \$ <u>671,812.14</u></b>  If all or part of your claim is secured, complete Item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete Item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of interest or additional charges.  <input type="checkbox"/> Check this box if claim is for a claim related to goods delivered during the twenty (20) days prior to (the "Petition Date"), pursuant to 11 U.S.C. §503(b)(9).		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a).</b> If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim:  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries or commissions (up to \$12,475*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).  <b>Amount entitled to priority:</b>  \$ _____  <i>* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</i>	
<b>2. Basis for Claim: <u>Lease Purchase Agreement</u></b> (See instruction #2 on reverse side.)  <b>3. Last four digits of any number by which creditor identifies debtor: _____</b> <b>3a. Debtor may have scheduled account as: _____</b> (See instruction #3a on reverse side.)  <b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <u>Lease Purchase agreement</u> Value of Property: <u>\$2,000,000.00</u> Annual Interest Rate <u>9.5</u> %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ <u>0</u> Basis for perfection: _____  <b>Amount of Secured Claim: \$ <u>671,812.14</u>    Amount Unsecured: \$ _____</b>		<b>FOR COURT USE ONLY</b>	
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b> If the documents are not available, please explain:			
<b>Date:</b> <b>7/22/15</b>	<b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <u>/s/ Jeffery S. Greene Atty, 321 E. Broadway, Newport TN 37821 423-623-7271</u>		
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.			

AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS AMENDMENT TO ASSET PURCHASE AGREEMENT ("Amendment") is made and entered into effective as of the 17 day of March, 2014, by and between MERAL, INC., a West Virginia corporation ("Seller"), and South Fork Coal Company, LLC, a West Virginia limited liability company ("Purchaser").

**Background:**

WHEREAS, Seller and Purchaser entered into that certain Asset Purchase Agreement dated January 31, 2011, (the "Asset Purchase Agreement") pursuant to which Seller sold, assigned, conveyed and transferred to Purchaser all of its right, title and interest in and to certain real property interests and other assets related thereto located in Greenbrier County, West Virginia. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meaning set forth in the Asset Purchase Agreement.

WHEREAS, Section 3(a)(iii) of the Asset Purchase Agreement required Purchaser to make payment of the Second Permitting Payment to Seller in the amount of One Million Dollars (\$1,000,000) on the date eighteen (18) months following the date of the First Permitting Payment.

WHEREAS, Seller and Purchaser have agreed to revise payment terms and conditions for the payment of the Second Permitting Payment and desire to document the revised payment terms and conditions upon which Purchaser shall make payment of the Second Permitting payment to Seller.

NOW, THEREFORE, WITNESSETH: That for and in consideration of the promises and the mutual covenants, representations and warranties herein contained, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller and Purchaser hereby agree as follows:

(1) PAYMENT TERMS. On and subject to the terms and conditions of this Amendment, Purchaser hereby agrees to make payment of the Second Permitting Payment in the principal amount of One Million Dollar (\$1,000,000), with compound interest thereon at the rate of Nine and One-Half Percent (9-1/2%) per annum, as follows:

- (a) Initial Payment. Purchaser shall pay Seller the amount of Two Hundred Thousand Dollars (\$200,000) on April 15, 2014.
- (b) Quarterly Payments. Beginning on July 15, 2014, and continuing on the fifteenth (15<sup>th</sup>) day of each third month thereafter, Purchaser shall make a payment of principal and interest to Seller in the amount of Fifty Thousand Dollars (\$50,000), credited first to then outstanding interest and then to principal, until July 15, 2019, at which time all then unpaid interest and principal shall be due and payable. An



Amortization Schedule demonstrating the schedule of payments set forth in this Amendment (the "Payment Plan") is attached hereto as Exhibit A.

(2) OTHER TERMS AND CONDITIONS. Additional terms with respect to the Payment Plan are as follows:

- (a) Production Benchmark Payments. The Payment Plan will be revised as follows:
  - (i) Upon the amount of coal produced and sold from the Greenbrier County property averaging at least forty thousand (40,000) tons per month for a continuous period of two (2) calendar months at an average sales price of at least \$105.00 per ton, Purchaser shall begin making increased quarterly payments of \$125,000.00 and if the then unpaid balance of principal owed to Seller by Purchaser is more than \$400,000.00, Purchaser shall make a lump sum payment to Seller in the amount of \$200,000.00 within the next six (6) calendar months.
  - (ii) Upon the amount of coal produced and sold from the Greenbrier County property averaging at least fifty thousand (50,000) tons per month for a continuous period of two (2) calendar months at an average sales price of at least \$105.00 per ton, Purchaser shall within forty-five (45) days pay all then remaining unpaid principal and interest.
- (b) Acceleration upon Change of Ownership. Upon the change of ownership of fifty-one percent (51%) or more of the membership interests of Purchaser, by the giving of written notice by Seller to Purchaser within ten (10) business days after receiving notice of such change of ownership from Purchaser or otherwise acquiring knowledge of such change of ownership, Seller may declare the then remaining unpaid amount of principal with interest thereon to be due and payable by Purchaser to Seller within ten (10) business days; provided, however, a transfer of fifty-one percent (51%) or more of the membership interests of Purchaser to an affiliate or parent, direct or indirect, of Purchaser which is under common control by the same entity that controls Purchaser shall not be deemed a change of ownership and control of Purchaser.
- (c) Prepayment. Purchaser shall have the right to prepay all or part of the outstanding principal with interest thereon only until the date payment of such principal is due from Purchaser.

(3) MISCELLANEOUS. Additional general terms to this Amendment are as follows:

- (a) Amendment. The terms and conditions of the Asset Purchase Agreement shall remain in full force and effect, unmodified, except as expressly modified by this Amendment.

- (b) Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the State of West Virginia without regard to its conflicts of law principles.

Electronic Signature and Counterparts. This Amendment may be executed by legal electronic signature and in one or more counterparts, any one of which need not contain the signatures of more than one party but all of which taken together shall constitute one and the same Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective duly authorized officers as of the day and year first above written.

Seller:

MERAL, INC.



By: Frederick F. Browning  
Its: President

Purchaser:

SOUTH FORK COAL COMPANY, LLC



By: Michael R. Castle

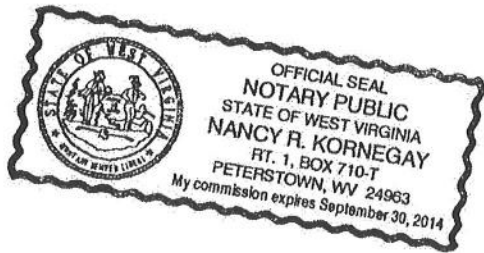
Its: CFO

STATE OF WEST VIRGINIA,

COUNTY OF MERCER, TO-WIT:

I, Nancy R. KORNEGAY, a Notary Public in and for the County and State aforesaid, do hereby certify that Frederick F. Browning, who signed the preceding AGREEMENT for Meral, Inc., a West Virginia corporation, has this day before me in my said County acknowledged that AGREEMENT to be the act and deed of said corporation.

Given under my hand and seal this the 19<sup>th</sup> day of March, 2014.



Nancy R. Kornegay  
Notary Public

(NOTARIAL SEAL)

STATE OF ~~WEST VIRGINIA~~, Tennessee

COUNTY OF Knox, TO-WIT:

I, Sarah C. Sharp, a Notary Public in and for the County and State aforesaid, do hereby certify that Michael R. Castle, who signed the preceding AGREEMENT for South Fork Coal Company, LLC, a West Virginia limited liability company, has this day before me in my said County acknowledged that AGREEMENT to be the act and deed of that limited liability company.

Given under my hand and seal this the 20<sup>th</sup> day of March, 2014.

Sarah C. Sharp  
Notary Public

(NOTARIAL SEAL)





03/11/2014 12:10:23 PM Page 1

## Note Payable Meral, Inc.

Compound Period ..... : Quarterly

Nominal Annual Rate .... : 9.500 %

## CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	04/15/2014	1,000,000.00	1		
2 Payment	04/15/2014	200,000.00	1		
3 Payment	07/15/2014	50,000.00	20	Quarterly	04/15/2019
4 Payment	07/15/2019	18,431.58	1		

## AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	04/15/2014				1,000,000.00
1	04/15/2014	200,000.00	0.00	200,000.00	800,000.00
2	07/15/2014	50,000.00	19,000.00	31,000.00	769,000.00
3	10/15/2014	50,000.00	18,263.75	31,736.25	737,263.75
2014 Totals		300,000.00	37,263.75	262,736.25	
4	01/15/2015	50,000.00	17,510.01	32,489.99	704,773.76
5	04/15/2015	50,000.00	16,738.38	33,261.62	671,512.14
6	07/15/2015	50,000.00	15,948.41	34,051.59	637,460.55
7	10/15/2015	50,000.00	15,139.69	34,860.31	602,600.24
2015 Totals		200,000.00	65,336.49	134,663.51	
8	01/15/2016	50,000.00	14,311.76	35,688.24	566,912.00
9	04/15/2016	50,000.00	13,464.16	36,535.84	530,376.16
10	07/15/2016	50,000.00	12,596.43	37,403.57	492,972.59
11	10/15/2016	50,000.00	11,708.10	38,291.90	454,680.69
2016 Totals		200,000.00	52,080.45	147,919.55	
12	01/15/2017	50,000.00	10,798.67	39,201.33	415,479.36
13	04/15/2017	50,000.00	9,867.63	40,132.37	375,346.99
14	07/15/2017	50,000.00	8,914.49	41,085.51	334,261.48
15	10/15/2017	50,000.00	7,938.71	42,061.29	292,200.19
2017 Totals		200,000.00	37,519.50	162,480.50	
16	01/15/2018	50,000.00	6,939.75	43,060.25	249,139.94
17	04/15/2018	50,000.00	5,917.07	44,082.93	205,057.01
18	07/15/2018	50,000.00	4,870.10	45,129.90	159,927.11
19	10/15/2018	50,000.00	3,798.27	46,201.73	113,725.38
2018 Totals		200,000.00	21,525.19	178,474.81	
20	01/15/2019	50,000.00	2,700.98	47,299.02	66,426.36
21	04/15/2019	50,000.00	1,577.63	48,422.37	18,003.99
22	07/15/2019	18,431.58	427.59	18,003.99	0.00
2019 Totals		118,431.58	4,706.20	113,725.38	

03/11/2014 12:10:23 PM Page 2

Note Payable Meral, Inc.

Date	Payment	Interest	Principal	Balance
Grand Totals	1,218,431.58	218,431.58	1,000,000.00	



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**FedEx** NEW Package  
Express US AirbillFedEx  
Tracking  
Number 8045 5473 5440

## 1 From

Date

7/30/15

Sender's  
Name

Jeffery S. Greene

Phone

423 623-7

Company

McSween, McSween, &amp; Greene, PLLC

Address

321 E. Broadway

City

Newport

State

TN

ZIP

37821

## 2 Your Internal Billing Reference

Meral, Inc - ISG

## 3 To

Recipient's  
Name

Xinergy Ltd. Claims Ct.

Company

c/o American Legal Claims Services, LLC

Address

5985 Richard St.

Dept./Floor/Suite/Room

Ste. 3

City

Jacksonville

State

FL

ZIP

32216

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JUL 31 2015

American Legal Claims

8045 5473 5440

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XH NRBA

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is selected.☒ FedEx Standard Overnight  
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Saturday Delivery NOT available.will be delivered on  
Delivery is selected.☐ FedEx Express Saver  
Third business day.  
Saturday Delivery NOT available.

## 5 Packaging

\* Declared value limit \$500

☒ FedEx Envelope\*☐ FedEx Pak\*☐ FedEx  
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Tube☐ Other

## 6 Special Handling and Delivery Signature Options

☐ SATURDAY Delivery  
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.☐ No Signature Required  
Package may be left without  
obtaining a signature for delivery.☐ Direct Signature  
Someone at recipient's address  
may sign for delivery. Fee applies.☐ Indirect Signature  
If no one is available at recipient's  
address, someone at a neighboring  
address may sign for delivery. For  
residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?

☒ No ☐ Yes  
One box must be checked.  
No per attached  
Shipper's Declaration.☐ Yes  
Shipper's Declaration  
not required.☐ Dry Ice  
Dry Ice 3 UN 1845☐ Cargo Aircraft Only

## 7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

Obtain recip.  
Acct. No.☒ Sender  
Acct. No. in Section  
7 will be billed.☐ Recipient☐ Third Party☐ Credit Card☐ Cash/Check

Total Packages

Total Weight

Credit Card Auth.

\*Our liability is limited to \$100 unless you declare a higher value. See the current FedEx Service Guide for details.

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